



22 CFR Part 42

[Public Notice: 11604]

RIN 1400-AE83

Visas: Immigrant Visas

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (“Department”) proposes to amend its regulation governing immigrant visas by removing the section which allows a consular officer to conduct an informal evaluation of the family members of an immigrant visa applicant to identify potential grounds of ineligibility. The existing regulation was promulgated in 1952, at a time when a consular officer could more readily assess a family member’s qualification for a visa. Assessing eligibility for an immigrant visa is now a complex task, and not one which can be accomplished accurately with an informal evaluation.

DATES: Written comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN *FEDERAL REGISTER*]**.

ADDRESSES: Interested parties may submit comments to the Department by any of the following methods:

- *Internet (preferred):* At www.regulations.gov, you can search for the document using **Docket Number DOS-2022-0046** or RIN 1400-AE83.
- *Email:* Claire Kelly, Office of Visa Services, Bureau of Consular Affairs, U.S. Department of State, VisaRegs@state.gov.

Public Participation

All interested parties are invited to participate in this rulemaking by submitting written views and comments on all aspects of this proposed rule. Comments must be submitted in English or an English translation must be provided. Comments that will provide the most

assistance to the Department of State in implementing this change will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include information that supports the recommendation.

Instructions: If you submit a comment, you must include the agency name and RIN 1400-AE83 for this proposed rulemaking in the title or body of the comment. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, because all submissions will be public, you may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission. The Department of State may withhold from public viewing information provided in comments that it determines may infringe privacy rights of an individual or is offensive. For additional information, please read the Privacy Act notice available in the footer at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Claire Kelly, Office of Visa Services, Bureau of Consular Affairs, Department of State, 600 19th St. NW, Washington, DC 20006, (202) 485-7586.

SUPPLEMENTARY INFORMATION:

I. What changes to 22 CFR 42.68 does the Department propose?

The Department proposes eliminating 22 CFR 42.68 in its entirety. Under 22 CFR 42.68 consular officers may, in certain circumstances, arrange for an informal evaluation of the family members of an immigrant visa applicant. Specifically, if a principal immigrant visa applicant will precede the family members in traveling to the United States, 22 CFR 42.68 allows a consular officer to arrange for an informal examination of the family members to make a preliminary determination of any ground of ineligibility on their part to receive a visa. Under the current regulation, the principal applicant must be informed of any preliminary finding of

ineligibility, and a determination in connection with an informal examination carries no assurance that the individual will be eligible for an immigrant visa in the future.

II. Why is the Department proposing this rule?

A. Increasing Complexity in Evaluating Immigrant Visa Applicants Makes Informal Evaluation an Inappropriate Use of Resources

The regulation, 22 CFR 42.68, was among the regulations promulgated by the Department in 1952 after the enactment of the Immigration and Nationality Act. Since 1952, however, the immigrant visa process generally and the scope of grounds on which an applicant may be ineligible for an immigrant visa has grown increasingly more complex, rendering the concept of an informal evaluation as outdated and impractical for a consular officer to complete with accuracy.

In 1952, a noncitizen wishing to immigrate completed Form FS-256a, and a consular officer then assessed their eligibility during an interview. This simple form requested basic biographical information and included a statement affirming that the noncitizen was not inadmissible. Since 1952, Congress has enacted numerous laws imposing new immigration ineligibilities.¹ Today, a noncitizen applying for an immigrant visa completes form DS-260, submits biometrics and supporting documents, including police certificates and the results of a medical examination, and the consular officer interviews the applicant and vets the applicant through a series of electronic national security and criminal vetting systems to identify potential grounds of ineligibility.² The results of these vetting measures are one of the central factors upon which a consular officer relies to determine whether the applicant is ineligible for a visa. Without a complete application for a visa with the required supporting documents, the Department lacks sufficient information

¹See, for example, the Immigration Reform and Control Act (IRCA) (100 Stat. 3359); the 1990 Immigration Act (104 Stat. 4978); the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) (110 Stat. 3009).

² Consistent with the Enhanced Border Security and Visa Entry Reform Act (EBSVERA) (116 Stat. 543).

for a thorough assessment of potential ineligibilities that would make an informal evaluation useful.

The informal evaluation that was created in 1952 does not provide a complete picture of an individual's eligibility for a visa. Evolving national security priorities, particularly since September 11, 2001, have resulted in significant modifications to the visa screening enterprise. The current enterprise includes numerous concurrent interagency reviews for potential derogatory information of both principal and derivative immigrant visa applicants. Given the broad range of potential ineligibilities, and the layered vetting processes in which applicants are reviewed, a consular officer cannot at the time of the informal evaluation make an accurate assessment as to the noncitizen's eligibility for a visa and consequently cannot fully advise a principal applicant on the eligibility of their family members.

If the Department were to update the informal evaluation process to provide a more informed and thorough review of a principal applicant's family members, such that a consular officer could provide an accurate preliminary assessment of visa eligibility, such changes would require reallocation of already limited resources of both the Department and other agencies to review applicants who have not – and potentially will not – apply for a visa, potentially requiring significant changes to Department systems that facilitate vetting of applicants based only on their submission of a completed visa application. Moreover, even with a comprehensive slate of information regarding a visa applicant, an assessment of eligibility can only account for their potential eligibility at that time, and is not a reliable indicator of whether they would be eligible in the future if and when they submit a visa application. Consequently, an informal evaluation is an inefficient use of State resources, and an unreliable tool for prospective applicants.

The authority provided for in 22 CFR 42.68 has not been used in recent years. Given the difficulty in accurately predicting an applicant's visa eligibility through an informal process, the Department is unable to allocate its limited resources toward offering a service that has been rendered obsolete.

B. Current Application of 22 CFR 42.68

To determine whether and how often the informal evaluation authority has been used, the Visa Office consulted with management in the immigrant visa units of five of the largest-volume immigrant visa processing posts: Ciudad Juarez, Manila, Santo Domingo, Mumbai, and Dhaka. Each of the five posts reported they have no record of ever providing this service. Given that these five posts process 32 percent of the immigrant visas worldwide, and they have no recent information regarding this service, we are confident that eliminating this service will not cause undue hardship to applicants or result in significant impacts to applicants.

In light of the complexity required to evaluate a noncitizen's eligibility for an immigrant visa, and limited resources to reliably assess eligibility absent a visa application, the Department seeks to eliminate this regulation.

III. Regulatory Findings

Administrative Procedure Act

This proposed rule involves the Department amending visa policy, which is a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), would be exempt from the notice and comment requirements of 5 U.S.C. 553. Notwithstanding the applicability of the foreign affairs exception to this rule, the Department is providing 60 days for public comment on this proposed rule's elimination of 22 CFR 42.68.

Regulatory Flexibility Act / Executive Order 13272 (Small Business)

As this rulemaking is not required to be published for notice and comment under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, the Department certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Pub. L. 104-4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any

rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This proposed rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Department reviewed this proposal to ensure consistency with those requirements. OMB reviewed this proposed rule and designated as a “significant regulatory action” under section 3(f) of E.O. 12866. Accordingly, OMB has reviewed this proposed regulation.

As noted above, the Visa Office consulted with management in the immigrant visa units of five of the largest-volume immigrant visa processing posts: Ciudad Juarez, Manila, Santo Domingo, Mumbai, and Dhaka. Each of the five posts reported they do not provide this service. Given that these five posts process 32 percent of the immigrant visas worldwide, and they have no information regarding the provision of this service, we are confident that eliminating this regulation will not result in significant impacts.

The Department has also considered this proposed rule in light of Executive Order 13563 and affirms that this proposed rule is consistent with the guidance therein.

Executive Orders 12372 and 13132 (Federalism)

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the proposed rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

Executive Order 12988 (Civil Justice Reform)

The Department has reviewed the proposed rule in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

The Department has determined that this proposed rule will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not preempt Tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this proposal.

Paperwork Reduction Act

This proposed rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 42

Immigration, Passports and visas.

For the reasons stated in the preamble, the Department proposes to amend 22 CFR part 42 as follows:

**PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE
IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105-277, 112 Stat. 2681; Pub. L. 108-449, 118 Stat. 3469; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105-51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42 U.S.C. 14901-14954 (Pub. L. 106-279, 114 Stat. 825); 8 U.S.C. 1101 (Pub. L. 111-287, 124 Stat. 3058); 8 U.S.C. 1154 (Pub. L. 109-162, 119 Stat. 2960); 8 U.S.C. 1201 (Pub. L. 114-70, 129 Stat. 561).

§ 42.68 [Removed and reserved]

2. Remove and reserve § 42.68.

Julie Stufft,

Deputy Assistant Secretary for Visa Services,

Consular Affairs,

Department of State.

Billing Code: 4710-06

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